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Decision

Matter of: Facility Services Management, Inc.

File: B-402757.6; B-402757.7

Date: February 10, 2011

John C. Dulske, Esq., Joan Kelley Fowler Gluys, Esq., and Bryan L. Kost, Esq., Dulske & Gluys, PC, for the protester.

David S. Black, Esq., and Jacob W. Scott, Esq., Holland & Knight LLP, for KIRA, Inc., an intervenor.

Wilbert T. Jones, Esq., and Julia A. LoBosco, Esq., Department of Homeland Security, United States Coast Guard, for the agency.

Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Past performance evaluation rating of satisfactory was unobjectionable where record included negative past performance information on protester's incumbent contract and showed protester's business relations ratings generally declined on contracts nearing completion.

DECISION

Facility Services Management, Inc. (FSI), of Clarksville, Tennessee, protests the Department of Homeland Security, United States Coast Guard's issuance of a blanket purchase agreement (BPA) to KIRA, Inc., of Miramar, Florida, under request for proposals (RFP) No. HSCG40-10-R-400001, for facility maintenance, repairs and operations services at the Coast Guard Yard (Yard) in Baltimore, Maryland. FSI challenges the evaluation of proposals.

We deny the protest.

BACKGROUND

The solicitation, limited to vendors holding General Services Administration Federal Supply Schedule contracts, contemplated issuance of a fixed-price BPA, with a base year and 4 option years, to operate, maintain, repair, and perform minor restoration at the Yard. The BPA was to be issued to the vendor whose proposal represented the "best value" under three factors (with subfactors): technical capability

(capability statement, key personnel, and management approach); past performance; and price. Proposals were to be rated on an adjectival basis—excellent, satisfactory, marginal, or unsatisfactory. The non-price factors combined were significantly more important than price.

Three vendors, including FSI and KIRA, submitted proposals. In the initial evaluation, FSI's proposal was rated satisfactory under all factors and subfactors, while KIRA's was rated excellent under all factors and subfactors except key personnel, under which it was rated satisfactory. The contracting officer then issued a BPA to KIRA on the basis that the technical superiority of its proposal warranted its higher price. In response to FSI's ensuing protest, the agency determined to take corrective action. We thereupon dismissed FSI's protest as academic (B-402757 et al., June 8, 2010). (A subsequent protest by FSI against the agency's corrective action was dismissed by GAO for failure to state a valid basis of protest (B-402757.4, June 23, 2010).)

The agency then issued each vendor a notification letter outlining their respective strengths and weaknesses as previously determined by the technical evaluation team (TET), amended the solicitation to publish vendor questions and answers, and requested final proposal revisions (FPR). Based upon the evaluation of FPRs, FSI's proposal was rated satisfactory under the technical capability factor and past performance factors, while KIRA's was rated satisfactory under the technical capability factor and excellent under the past performance factor. Upon finding KIRA's revised proposal to be both technically superior to and lower priced than FSI's (\$15.7 million versus \$16.9 million), the contracting officer again issued the BPA to KIRA. After a debriefing, FSI filed this protest.

DISCUSSION

FSI asserts that the agency unreasonably rated proposals under the technical capability and past performance evaluation factors. In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. Here, we have considered all of FSI's challenges to the award, and find that none furnish a basis for questioning issuance of the BPA to KIRA. We address below several of FSI's more significant arguments.

FSI Capability Statement

Under the capability statement subfactor, each vendor was required to demonstrate the soundness of its relevant knowledge and competence regarding the government's requirements and program objectives; its capability to perform the PWS; and its understanding of and approach to the work to be performed under the PWS. RFP at 21, 26. In evaluating FSI's proposal under this subfactor, the TET assigned several

strengths based on FSI's prior experience, including its performance of the current, incumbent contract, and its proposal to [deleted] employees. However, the TET nevertheless rated FSI's proposal as only satisfactory under the capability statement subfactor due to a number of weaknesses. For example, the agency determined that FSI had failed to adequately discuss its approach to successfully overcoming potential problems associated with implementing FSI's planned [deleted]. TET Report at 13. More generally, the TET assigned a weakness on the basis that FSI had focused on the practices, means, and methods under its current contract, with little discussion of its capability and approach to performing the new contract. Id. The agency noted in this regard that the current contract differed in significant measure from the requirements under the new PWS. Price Negotiation Memorandum (PNM) at 6; Supplemental Agency Report (SAR) at 3.

FSI asserts that the evaluation was unreasonable because its FPR provided a detailed analysis of how it had successfully performed the incumbent contract in order to show its competence to perform the new PWS. FSI maintains that its focus on the incumbent contract was reasonable because the differences between the new PWS and its incumbent contract were minimal, and did not change the scope of the work.

The evaluation under this subfactor was unobjectionable. While the RFP called for evaluation of an offeror's demonstrated relevant knowledge, it also called for evaluation of the offeror's understanding of and approach to performing the requirements under the new PWS. RFP at 26. As determined by the agency, however, in a number of areas FSI's proposal included little discussion of its specific approach to performing the new PWS beyond identification of the responsible staff members and their duties. Declaration of TET Chair ¶ 2; see, e.g., FSI FPR at 6 ([deleted]) and 8 ([deleted]).

Furthermore, the record supports the reasonableness of the agency's concern that in FSI's focus on its prior contract rather than the new PWS, it failed to account for the effect of significant changes under the new PWS. For example, the new PWS reduced the maximum authorized dollar value for certain types of work ("level III work") from \$75,000 under the incumbent contract to \$25,000. PWS § C.5.1.1.2.2. The agency noted that FSI's proposal did not reflect an understanding of the impact of this reduction on performance, as when FSI discussed previous snow removal work, which was at levels in excess of the new authority, with no indication of how it therefore needed to change its approach in this regard in the future. FSI FPR at 10-11; Contracting Officer's Final Declaration ¶ 2. Likewise, in order to ensure continuity of key personnel staffing, the new PWS required vendors to assign key personnel as proposed without any substitution unless necessitated by illness, death, or termination of employment. See PWS ¶ C.1.2; Contracting Officer's Final Declaration ¶ 2. Here, after its proposal was submitted, FSI's proposed [deleted] quit FSI to take another job. Although FSI notified the agency that it was working to find a replacement, we find reasonable the contracting officer's concern that the

[deleted] departure prior to award and without immediate replacement indicated a lack of understanding of the new RFP's emphasis on ensuring key personnel staffing. Contracting Officer's Final Declaration ¶ 2.

In summary, we conclude that the agency reasonably determined that given FSI's failure to adequately discuss its approach to performing the requirements under the new PWS, the agency reasonably determined that FSI's proposal warranted no more than a satisfactory rating under the capability subfactor.

FSI Key Personnel

Under the key personnel subfactor, the TET found that many of FSI's proposed personnel exceeded the minimum RFP qualifications requirements, but assigned it only an overall satisfactory rating based on a weakness concerning FSI's proposed APM. TET Report at 13. Specifically, while the TET found that the proposed APM met the RFP's requirement for 5 years of experience as a project manager of a multi-discipline workforce on similar contracts, the panel was concerned that nearly all of his relevant experience in this regard dated to the 1990s.

FSI asserts that assigning only a satisfactory rating was unreasonable, since the APM's resume (submitted with its FPR) showed more than 3 months service as the APM under the incumbent bridge contract. Further, FSI asserts that a resume for the APM previously provided under the prior bridge contract showed relevant experience from 2000 to 2007.

The agency's evaluation in this regard was reasonable. The resume submitted with the protester's FPR indicated that, apart from less than 4 months service on the bridge contract, the proposed APM's only relevant service occurred in the period 1990 to 1999. FSI FPR at 17. His resume indicated no work from 2007 to 2010, and only unrelated work from 2000 to 2007 as a self-employed property owner/real estate investor. *Id.* While the RFP did not specify how recent an APM's experience had to be, we find reasonable the TET's concern that he had almost no recent relevant experience. See North Am. Military Hous., LLC, B-289604, Mar. 20, 2002, 2002 CPD ¶ 69 at 5 (agency may properly take into account specific, albeit not expressly identified matters that are logically encompassed by or related to stated evaluation criteria). As for the bridge contract resume submitted for an earlier procurement, which indicated that the APM had served as a project manager from 2000 to 2007, the record indicates that the TET members were either unaware of this earlier resume or unaware of a discrepancy between the resumes. Declarations of TET Chair, Member 1/COTR, and Member 2. Since FSI was obligated to submit the most up-to-date information in its FPR, we believe that the agency therefore could reasonably rely on that submission without the need to seek out and review previously submitted resumes to ensure their consistency with the resumes in the FPR. See Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3 (offeror responsible for the contents of its proposal and ensuring it provides complete

information as part of adequately written proposal). In these circumstances, given the APM's dated experience, the agency could reasonably conclude that FSI's proposal warranted no more than an overall satisfactory rating for key personnel.

Past Performance

FSI challenges the rating of its past performance rating as only satisfactory and KIRA's as excellent. In this regard, vendors were required to submit corporate resumes for at least three, but not more than five contracts, completed in the past 7 years or currently in process, for the same services as solicited in the RFP. RFP at 23. The RFP provided for evaluation of vendors' demonstrated quality of performance on similar work, including ability to control work quality and cost, timeliness of performance, and effectiveness at accomplishing contract goals. RFP at 26.

FSI Past Performance

FSI asserts that its past performance rating should have been excellent rather than satisfactory. In this regard, according to the protester, a past performance rating of only satisfactory was unreasonable in view of the fact that two of its references submitted performance questionnaires which rated its overall performance with scores of 5 out of 5; a third reference rated it with an overall score of 4; and the contracting officer's technical representative (COTR) for the incumbent bridge contract had rated its performance as very good in a questionnaire that was submitted on FSI's behalf for a procurement with another agency.

As a general matter, the evaluation of an offeror's past performance, including relevance and scope of the performance history to be considered, is within the discretion of the contracting agency. We will not question an agency's judgment unless it is unreasonable or inconsistent with the terms of the solicitation, or is undocumented. Family Entm't Servs., Inc., d/b/a/ IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5.

The past performance evaluation here was unobjectionable. The record indicates that while the evaluators acknowledged FSI's positive performance questionnaire ratings, TET Report at 17; PNM at 7, they also noted that only one of FSI's contracts--the incumbent contract-- was for maintaining facilities comparable to the Yard. In this regard, as acknowledged by FSI, the Yard encompasses approximately 100 buildings with 1 million square feet and 113 acres. In contrast, the three past performance questionnaires submitted for FSI for other contracts were for relatively limited facilities, including one for work at a facility described as covering approximately 140,000 square feet and another for a facility with 215,000 square feet. Similarly, only FSI's incumbent work was comparable in value to its proposed efforts here (\$16.9 million over 5 years). In this regard, two of FSI's other contracts were valued at less than \$2 million over 5 years; another was valued at less than \$4 million

over 9 years; and a fourth was valued at \$17 million over 11 years. FSI FPR, Past Performance Proposal at 3, 5, 7, 9.

Further, the agency reasonably found a number of aspects of FSI's past performance to be of concern. PNM at 7. For example, the record indicates that FSI experienced high turnover in project managers (PM) (six in less than 7 years) under the incumbent contract. While FSI maintains that it replaced the departing PMs quickly, the agency found that the repeated vacancies hindered other key personnel in performing their duties, and that using APMs to fill the PM position in turn led to the need to find qualified personnel to fill the APM position. PNM at 8; Contracting Officer's Statement at 8. In addition, the record indicates such other performance problems as FSI's failure to submit quotations for level III reimbursable work within the allowed 5-day response time; quotations that were over the not-to-exceed level; and failures to timely notify the contracting officer of expected delays in various tasks. PNM at 8-9; Contracting Officer's Statement at 9.¹

While the COTR on the incumbent bridge contract rated FSI's past performance favorably in the questionnaire furnished for another procurement, the record indicates that he was unaware of several of the above contract administration issues. COTR Declaration ¶ 2; Contracting Officer's Final Declaration ¶ 3. Since the contracting officer for this RFP was also the contracting officer for the bridge contract, and was familiar with FSI's performance problems on the prior contract, we believe that she could reasonably discount the COTR's assessment, and instead rely on her knowledge of FSI's continuing performance issues in evaluating its past performance as satisfactory.

Finally, while the past performance questionnaires for FSI's other contracts assigned high overall ratings, the contracting officer here noted that FSI's business relations

¹ FSI asserts that since the contracting officer's statement noted that FSI had filed a claim regarding snow removal under the incumbent contract, this represented an improper adverse consideration of the claim in the past performance evaluation. FSI Comments at 16; see Nova Group, Inc., B-282947, Sept.15, 1999, 99-2 CPD ¶ 56 at 6 (improper to downgrade past performance simply for filing claim for work directed by agency). However, the evaluators deny using FSI's claim activity as an aspect of its past performance evaluation, and there is no evidence to the contrary. Declarations of TET Chair ¶ 3; TET Member 1/COTR at 1; TET Member 2 at 2; Contracting Officer's Final Declaration ¶ 5. Further, the fact that FSI had filed a claim did not preclude the agency from considering FSI's performance problems under the incumbent contract, including issues with regard to snow removal. See AmClyde Engineered Prods. Co., Inc., B-282271, B-282271.2, June 21, 1999, 99-2 CPD ¶ 5 at 6 (where offeror had other past performance problems, reference to claims history in evaluation was unobjectionable since there was no evidence that it impacted offeror's rating).

ratings for each of the three contracts appeared to decline as the contract neared completion. For example, for a Fort Campbell, Kentucky barracks maintenance contract, which had 2 years of performance left, FSI was rated with all 5s. In contrast, a facility operations contract at Fairchild Air Force Base, Washington, which had 8 months before completion, was scored with a mixture of 5s and 4s, and a facility operation/maintenance contract at the Southeast Archives Building, Georgia, which had 3 months before completion, was scored with a mixture of 4s and one 3. Protest exh. B. When considered with the negative information concerning FSI's performance on the incumbent contract, the contracting officer concluded there was an overall trend toward declining performance by FSI toward the end of contract performance. Contracting Officer's Final Declaration ¶ 4.

While FSI disagrees with the contracting officer's rationale, we find nothing unreasonable in the contracting officer's determination that, given the specific performance concerns identified above, a past performance rating of excellent was not warranted.

KIRA Past Performance

FSI asserts that the evaluation of KIRA's past performance as excellent was unreasonable because KIRA's past performance record included some "satisfactory" ratings and the agency improperly credited KIRA for contracts that were not of similar scope to the RFP.

The agency's evaluation was reasonable. KIRA submitted information on three past base operations contracts valued from \$81 million to \$250 million for performance periods ranging from 7 to 10 years. Thus, each of KIRA's contracts was greater in scope than the current contract. While FSI asserts that it was improper to give KIRA credit for its performance on more complex contracts because they were not of the same scope, we believe the agency reasonably concluded that KIRA's proven performance on much larger projects was a strong indication that it would be capable of meeting the PWS requirements here. SAR at 5; see Family Entm't Servs., Inc., d/b/a IMC, supra (agency may reasonably consider contract performance under contracts more complex than work solicited).

Further, favorable past performance questionnaires were received for all three contracts, including one which rated KIRA as overall 5 out of 5 (substantially exceeded expectations) and two of which rated its overall performance as 4 out of 5 (met all expectations and exceeded some). The fact that one of KIRA's references included two ratings of 3 (met all expectations), while all other individual ratings were 4s and 5s, did not preclude the agency from evaluating KIRA's performance as overall excellent. Here, in contrast to FSI's past performance record, the evaluators found no weaknesses and no indication of declining performance over the life of the contracts. Rather, KIRA's past performance was characterized by very positive

performance managing complex base maintenance contracts. TET Report at 15. In these circumstances, we find no basis to question the past performance evaluation.

The protest is denied.

Lynn H. Gibson
General Counsel